

### REMARKS

Claims 1-18 were filed and are pending in the application. Claims 1-2 and 4-13, and 15-18 are rejected. Claims 3 and 14 are objected to as allowable if amended to incorporate the limitations of claims upon which they depend.

### Rejections Under 35 USC §103

The Examiner rejected:

- Independent claims 1, 2 and 4, and dependent claims 5-11, under 35 USC §103(a) as unpatentable over US Patent 5,388,583 (Ragauskas *et al.* '583) in view of Alexandrov AV, Joseph M: Transcranial Doppler: An Overview of its Clinical Applications, *Journal of Emergency and Intensive Care Medicine*. 2000. Volume 4 Number 1 (Alexandrov *et al.*);
- Dependent claims 12, 13, and 15 under 35 USC §103(a) as obvious over Ragauskas *et al.* '583 and Alexandrov *et al.* as applied to claim 4, in view of US Patent 5,951,477 (Ragauskas *et al.* '477).
- Dependent claims 16-18 under 35 USC §103(a) as obvious over Ragauskas *et al.* '583 and Alexandrov *et al.* as applied to claim 4, and further in view of US Patent 6,328,694 (Michaeli).

Thus, in each case, the Examiner's position relies for proof upon the teaching of Alexandrov *et al.* However, the Alexandrov *et al.* reference is not available to the Examiner because it was published on January 1, 2000, after the effective filing date of this application. See <http://www.uam.es/departamentos/medicina/anesnet/journals/ija/vol4n2/tcd.htm> (date accessed: March 23, 2004): "The correct citation of this article for reference is: Alexandrov AV, Joseph M: Transcranial Doppler; An Overview of its Clinical Applications. The Internet Journal of Emergency and Intensive Care Medicine 2000; Vol4 N1: <http://www.ispub.com/journals/IJEICM/Vol4N1/tcd.htm>; **Published January 1, 2000; Last Updated January 1, 2000.**" (Emphasis in bold.)



This application claims priority to Provisional Application Number 60/164,586 filed November 10, 1999, to which it is entitled under 35 USC §119(e)(3) because Friday, November 10, 2000 was a holiday in the District of Columbia; thus the period of pendency of the provisional application carried over to Monday, November 13, 2000, the filing date of the application. See specification page 1, lines 6-8. The Examiner is asked to kindly indicate the claim for priority in box 14 of the Office Action Summary (PTOL-326) at his next opportunity.

Therefore, the effective filing date of this application is before the publication date of the Alexandrov *et al* reference, and a proper rejection cannot rely on it. Without the teachings of this reference, at least one element of every independent claim has not been shown to be in the prior art, as required for a *prima facie* case of obviousness.

This is not an admission, express or implicit, by the applicants that the Alexandrov *et al* reference teaches what the Examiner contends it teaches, either alone or in combination with any other reference. No estoppel on the scope of the claims, either literal or under the Doctrine of Equivalents, is intended and none should be assumed.

Therefore, all claims should be allowed. If you have any questions, please contact me at your convenience.

Very truly yours,

Peter Forrest  
Registration No. 33,235

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